CF0000058292

(2)

Division Bench (Criminal)

समक्ष न्यायालय माननीय , उच्च न्यायालय, जबलपुर (म0प्र0)

क्रिमनल अपील क्रमांक:---513---/95

अपीलार्थी गण :- /(1) आत्माराम

(2) सन्तराम

विरुद्ध

प्रत्यर्थी :- म0 प्र0 शासन

द्वारा आरक्षी केन्द्र घरघोडा जिला, रायगढ़

अपील दंड प्रक्रिया संहिता की धारा 374 (2) के अंतर्गत

(U3H)

22-3-95

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

12-4-2006

Mr. J.A. Lohani, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C., the accused/appellants namely, Atmaram & Sanatram have questioned legality & correctness of the judgment of conviction and order of sentence dated 8th February, 1995, passed by the 1st Additional Sessions Judge, Rajgarh, in Sessions Trial No.301/93, whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 read with Section 34 of the I.P.C., for causing the death of Bhog Singh, sentenced each of the accused to undergo imprisonment for life and pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month.

The case of the prosecution is that at about 9 p.m. to 10 p.m. in the night of 26-10-93 deceased Bhog Singh was muttering and abusing the accused persons in the courtyard of his house, which enraged the accused persons, they caught hold of the deceased, took him towards the street and started assaulting with Lathis. After receiving the injuries, deceased Bhog Singh came staggering to his

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house and fell down. Next day morning when Bhog Singh was being taken to Gharghoda hospital for treatment, he succumbed to the injuries on the way. The occurrence was witnessed by Mehattar (PW-1) brother of the deceased, one villager Janakram (PW-2) and Sadhuram (PW-5). The matter was reported by Mehattar in Police Station: Gharghoda where the first information report (Ex.P-1) was registered by S.R. Rana (PW-12), Assistant Sub Inspector, for offence punishable under Section 302 read with Section 34 of the I.P.C. He left for the place of occurrence and after giving notice to the Panchas, prepared the Panchnama (Ex.P-9) of the body of Bhog Singh. The dead body of Bhog Singh was sent for post-mortem examination to Primary Health Centre, Gharghoda, where Dr. B.R. Banjare (PW-9) conducted post-mortem and prepared the post-mortem report (Ex.P-12) in which he noticed as many as ten injuries. During the investigation, site plan Ex.P-3 was prepared. Accused Atmaram gave memorandum Ex.P-4 and in pursuance of that, one Tendu Lathi was recovered at his instance under Ex.P-6. Accused Sanatram gave memorandum Ex.P-5 and in pursuance of that, one bamboo Lathi was recovered at his instance under Ex.P-7.

After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Raigarh, who in turn committed the case to the Sessions Judge, Raigarh, from where learned 1st Additional Sessions Judge, Raigarh, received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined 12 witnesses. Statements of the accused persons were recorded under

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Section 313 of the Cr.P.C., in which they denied the prosecution evidence and stated that they are innocent and they have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing respective counsel, convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment.

We have heard Mr. J.A. Lohani, learned counsel for the appellants and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Bhog Singh is not in dispute.

As far as involvement of the accused/appellants in commission of crime is concerned, Mehattar (PW-1), brother of the deceased, who witnessed the crime and who lodged the first information report (Ex.P-1) at Police Station: Gharghoda, has stated in his evidence that his brother was half-mad, he was able to manage his daily needs and used to mutter. On the fateful day, deceased Bhog Singh was muttering in his residence, accused persons Sanatram & Atmaram came in the kitchen garden, which was in the backside of the house, and they also started abusing Bhog Singh. After some time, his brother came out side the house where accused Sanatram & Atmaram were waiting and they started assaulting his brother (deceased). Hearing the sound, he (PW-1) came out of the house and saw that his brother (deceased) was coming to the house while staggering. At that time, Sanatram attacked with Lathi on parietal region of Bhog Singh as a result of which, his brother (deceased) fell down and thereafter, Sanatram also assaulted

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his brother. In the mean time, some villagers came at the door and asked that Bhog Singh be taken to the doctor for treatment. The accused persons said that they are bringing the doctor, but they never returned. His brother became unconscious and next day morning on the advice of villagers when he was being taken to Gharghoda hospital, he died on the way.

The evidence of Mehattar (PW-1) is corroborated by the evidence of Janakram (PW-2), who has stated in his evidence that on the fateful day at about 8 p.m. to 10 p.m. he was sitting in the Parchi of his house and he saw that the accused persons were assaulting the deceased. In cross-examination, he has stated that he does not know whether Bhog Singh was mad and he used to abuse the villagers. Sadhuram (PW-5) has also corroborated the above evidence and stated that the accused persons assaulted the deceased.

From the evidence of these three eyewitnesses, it stands established that the accused persons assaulted the deceased. In cross-examination of these witnesses, defence has not been able to elicit any circumstance so as to make the evidence of these witnesses unreliable or untrustworthy.

Mr. J.A. Lohani, learned counsel for the appellants, argued that there is nothing in the evidence, which shows that the accused/appellants assaulted the deceased with intention to cause death. While placing reliance on the judgments of the Apex Court in the matters of **Tholan v. State of** T.N. reported in AIR 1984 Supreme Court 759 and **Thankachan v. State of Kerala** reported in **2005 (6) Supreme 14**, learned counsel argued that offence against the accused/ appellants does not travel beyond Section 304 Part-II of the I.P.C.

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On the other hand, Mr. U.N.S. Deo & Mr. Akhil Mishra supported the judgment of the trial Court.

In the matter of **Tholan (supra)**, the Apex Court held that

> "the accused started remonstrations using filthy language against certain organisers of a chit fund who had no connection with the deceased, in front of the house of the deceased and the deceased came out of his house and asked the accused to go away, the accused on spur of moment gave only one blow with knife to the deceased and pushed him to some distance."

On these facts, the Court held that

> "In the circumstances of that case that, though requisite intention to commit murder could not be attributed to the accused, he wielded a weapon like a knife and therefore, he could be attributed with knowledge that he was likely to cause an injury which was likely to cause death."

Therefore, offence against the accused under Section 304 Part-II of the I.P.C. was made out.

In the matter of **Thankachan (supra)**, the Apex Court on the facts held that

> "Appellant came home in drunken state and started quarreling with his wife—Deceased son of appellant woke up and tried to intervene to save his mother—Appellant picked up a chopper and inflicted cut injury on back of left leg below knee" and on account of excessive bleeding son died.

The Court held that

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"Appellant could not be said to have inflicted injury with intention of causing death or with intention of causing such bodily injury sufficient in ordinary course of nature to cause death".

In the light of above judgments, if we examine the evidence available on record, Mehattar (PW-1), brother of the deceased, has categorically stated that his brother was half-mad and he used to mutter. On the fateful day, his brother was muttering, therefore, the accused persons came and assaulted him. As per the evidence of Dr. B.R. Banjare (PW-9), there were ten injuries on the body of the deceased out of which there was only one injury on head and injury Nos.2 to 10 were on the other parts of the body. The doctor in cross-examination has stated that the deceased died on account of head injury.

Therefore, as the deceased was a mad person and he was muttering which enraged the accused persons and they assaulted him, but there was only one fatal injury on the head and there was no enmity between the accused persons and the deceased, further from the evidence it is clear that the accused persons assaulted the deceased because he was muttering and abusing, in the circumstances, intention to cause death cannot be attributed to the accused persons, however, it can safely be inferred that the accused persons had knowledge that the manner in which they were assaulting the deceased, they may likely to cause death. Therefore, offence against the accused/appellants does not travel beyond Section 304 Part-II of the I.P.C. As such, conviction and sentence imposed upon the accused/appellants under Section 302 read with Section 34 of the I.P.C. cannot be sustained.

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	In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence imposed upon the accused/appellants under Section 302 read with Section 34 of the I.P.C. are set aside and they are acquitted of the above charge. However, they are convicted under Section 304 Part-II of the I.P.C. and each of them is sentenced to undergo R.I. for ten years. It is stated that the accused/appellants are in custody since 27-10-93, which has not been disputed by learned Additional Public Prosecutor, thereby, they have already served out the sentence imposed upon them. They be set at liberty forthwith, if not required in any other case. Parties are entitled for certified copy of this order. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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